

**HUDSON & O'LEARY** LLP  
ATTORNEYS AT LAW

1010 MoPac Circle, Suite 201  
Austin, Texas 78746  
(512) 441-9941 Fax (512) 441-1501  
GHUDSON@HOLAW.NET  
TOLEARY@HOLAW.NET

September 18, 2017

**VIA FIRST CLASS MAIL**

The Honorable Ken Paxton  
Attorney General of Texas  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: **City of Conroe, Texas Request September 1, 2017 request for Open  
Records Letter Ruling**

**Requestor: Spencer Woodman**

Dear General Paxton:

This firm serves as legal counsel to The GEO Group, Inc. ("GEO"), which is planning the construction of a new facility for the housing of immigrant detainees in the City of Conroe, Texas ("the Facility") pursuant to a contract awarded GEO by the U.S. Immigration and Customs Enforcement. The estimated cost of the Facility is expected to exceed \$100 million.

On or about August 22, 2017, the City of Conroe received a Public Information Act ("PIA") request from Spencer Woodman ("the Requestor") for ***"a digital copy of any blueprints and/or floor-plans for the planned Immigration and Customs Enforcement facility that is to be built in Conroe on contract with the GEO Group."*** A true and correct copy of the Requestor's PIA request is attached hereto as **Exhibit A**.

By letters dated September 1, 2017 and September 7, 2017, the Conroe City Attorney's Office asserted certain exceptions under the Texas Public Information Act regarding the responsive information. Copies of the City Attorney's letters to your office are attached as **Exhibit B**.

GEO was advised of the Requestor's PIA request by a letter from the Conroe City Attorney's Office dated September 1, 2017 and received by GEO on September 5, 2017. A copy of that communication is attached hereto as **Exhibit C**.

GEO has submitted an Overall Facility Plan document ("Floorplan") for the proposed facility to the City of Conroe for review by the City's building inspection department in connection with requests for one or more building permits. The Floorplan is detailed in both scope and content and was prepared by a registered professional architect, whose seal is embossed on the Floorplan document. Virtually all aspects of the Facility are detailed in the Floorplan document, including the location of inmate cells, perimeter fencing, areas of ingress and egress, and the location of administrative offices, detention control rooms, and the visitation area.



GEO contends that the Floorplan is confidential under section 552.104(a) (Information Relating To Competition or Bidding) of the PIA and in addition, section 552.108(b) of the PIA (security measures) as the release of the Floorplan to the public would likely compromise the security of the facility. Accordingly, GEO seeks a ruling from your office regarding the City Attorney's authority to withhold the Floorplan from the Requestor under said exceptions.

This request is made within ten business days of the date GEO received the notice from the City Attorney of the Requestor's request.

#### Responsive Documents

GEO understands that copy of the document (Floorplan) that GEO seeks to protect from public disclosure has been tendered to your office by the City Attorney.

#### Argument

GEO's arguments for the protection of such information from disclosure are as follows:

#### ***Information Protected under Section 552.104(a) of the Act***

GEO contends that the Floorplan should be protected from disclosure under section 552.104(a) of the PIA, insofar as the release to the public of this information would likely put GEO at a competitive disadvantage in future proposals to government agencies for similar facilities, including other solicitations by U.S. Immigration and Customs Enforcement (hereinafter "ICE") to securely house immigrant detainees.

Section 552.104(a) of the PIA excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The "test under section 552.104(a) is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015).

Prior to the execution of its contract with ICE, GEO participated in a competitive solicitation for the award of a contract to securely house ICE immigrant detainees. The solicitation included the construction of a new detention facility. Negotiations with ICE during the solicitation and negotiation of the contract included extensive reviews of the proposed Floorplan for the Facility, as it was one of the most critical elements of the contract. GEO expended significant sums in the development of the Floorplan, including use of an experienced professional architect to design a facility that met ICE standards and requirements as outlined in the solicitation documents.

The specific design components of a detention facility are especially sensitive in the context of competitiveness in the private prison management marketplace, as there are only a few well-established companies in the market providing such services, and the overall design and associated cost of each new facility are closely guarded trade secrets within the industry. Such information, if sought directly from ICE under a Freedom of Information Act ("FOIA") request



would be excepted from disclosure.<sup>1</sup>

Competition for contracts to manage and operate detention facilities (including facilities for the secure housing of ICE detainees) is fierce. The public release of the Floorplan, which includes detailed elements of each security component of the Facility, would clearly allow GEO's competitors unfair insight into GEO's proprietary work-product regarding the proposed layout and features of the Facility, which unquestionably would be detrimental to GEO in future solicitations to ICE or other federal agencies. Indicative pricing for the construction of a facility can be fairly easily estimated if one has a detailed floorplan for a facility such as the Facility. A competitor with access to the Floorplan would be distinctly advantaged, as it could study, utilize and/or copy GEO's proprietary concepts into its designs and floorplans (to GEO's detriment) and submit those designs and floorplans to federal agencies (including ICE) in response to future competitive solicitations. In addition, it could underbid its pricing on the facility component of the solicitation to GEO's detriment.

In the current instance, the Floorplan is not independently available. Nor has it been released by the City of Conroe. Moreover, GEO does not make its proprietary designs for its facilities known within the Company to more than a few executives on a "need to know" basis.

Many of the foregoing statements comport with Boeing's evidence and objections to the release of the Kelly lease as discussed in *Boeing Co. v. Paxton*. For example, Boeing argued the public release of the Kelly real property lease and the detailed information contained therein could allow a competitor to underbid Boeing on government contract by enticing another landlord to offer a lower lease rental. In addition, Boeing argued that certain sensitive information in the lease was not publicly available and only about a dozen of Boeing's 165,000 employees had access to it.

The 552.104(a) protections should extend to a facility design in a government contract, as is asserted here by GEO, precisely because the release of such design information would give advantage to a competitor even after a contract is executed. Prior rulings from your office confirm such protections. See, OR2016-00195 (January 5, 2016); OR2017-10132 (May 11, 2017) (involving blueprints of a facility that were submitted to the City of Frisco for review).

### ***Information Protected under Section 552.108(b) of the Act***

The City Attorney's Office<sup>2</sup> has also raised section 552.108(b) as an exception to disclosure of

---

<sup>1</sup> See *Raher v. Federal Bureau of Prisons* 2011 WL 2014875 (In the United States District Court for the District of Oregon, May 24, 2011) at HN 11 ("Accordingly, BOP [Bureau of Prisons] may rely on Exemption 7(F) [of FOIA] to withhold information in the technical proposals for CAR Phases 5 and 6 pertaining to physical security plans, blueprints, architectural floor plans, and any information regarding the internal physical structure of a BOP correctional facility.") A copy of the Court's opinion in *Raher* is included herewith at Appendix A.

<sup>2</sup> The City Attorney's Office represents the City Police Department and also prosecutes certain crimes committed within the City of Conroe.



the Floorplan for the Facility, as the City explains that the release of the Floorplan could result in security vulnerabilities that could present a threat to the visitors of the facility and the public.<sup>3</sup> This argument is common sense from a security perspective and GEO concurs with this assessment. The Floorplan should be protected under 552.108(b). Clearly, it would be easier to compromise security and the safety of detention personnel at the Facility if one were in possession of the Floorplan. Prior opinions of your office confirm the applicability of 552.108(b) to information regarding the design and layout of detention facilities. See, OR2014-21732 (December 2, 2014) ("graphic details of the internal design and layout of one of the department's [TDCJ's] most sensitive and secure areas was protected under section 552.018(b)(1) of the Government Code."); OR2009-00342 (January 9, 2009) (blueprints of the Garza East Unit that "are drawn to scale and depict actual footage [and] show the exact location of the pods, fences, walls, [and] metal gates" found to be excepted from disclosure under 552.018(b)(1)). The same security concerns raised in those requests are present here.

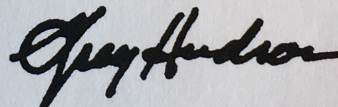
**Conclusion:**

GEO objects to the disclosure of the Floorplan for the Facility, as its release to the public would comprise GEO's competitive position in a highly competitive market. Section 552.104(a) of the PIA is intended to protect companies such as GEO when faced with the release of their proprietary information that would cause irreparable competitive harm.

In addition, GEO concurs with the conclusion of the Conroe City Attorney's Office that release of the Floorplan could compromise security at the Facility and present a danger to detention staff and the public, and for those reasons section 552.018(b) of the PIA should except this information from public disclosure.

I appreciate your attention to this request, and if you have any questions regarding this matter, please feel free to contact me.

Very truly yours,



J. Greg Hudson  
On behalf of The GEO Group, Inc.

Enclosures – A through C

Appendix - *Raher v. Federal Bureau of Prisons* 2011 WL 2014875 (In the United States District Court for the District of Oregon, May 24, 2011)

---

<sup>3</sup> See, City Attorney Letter of September 7, 2017 attached hereto as Exhibit B.



The Honorable Ken Paxton  
September 18, 2017  
Page 5

cc: Spencer Woodman

[REDACTED]  
[REDACTED]  
[REDACTED]

Gary Scott  
Assistant City Attorney  
City of Conroe, Texas  
300 W. Davis  
P.O. Box 3066  
Conroe, Texas 77305

5